

ARTICLE 18**CONDITIONAL USES****§ 18.01. PURPOSE.**

Recognizing that certain uses, activities and structures may be necessary to serve the needs and convenience of the Town of Westfield and its residents, and at the same time recognizing that such uses may be or become adverse to the public health, safety and general welfare if located and operated without proper consideration being given to existing conditions and the character of the surrounding area, such uses are hereby designated as conditional uses. The conditional uses indicated in this section shall be permitted only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this article, and only upon the issuance of an authorization therefore by the Planning Board.

§ 18.02. LIST OF CONDITIONAL USES, ZONES WHERE PERMITTED.

The conditional uses indicated below shall be permitted only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this article, and only upon the issuance of an authorization therefore by the Planning Board or the Board of Adjustment, as applicable. The conditional uses and the zones in which they are permitted are limited to the following:

- A. Residential cluster development in the RS-40 zone district;
- B. Assisted living facilities in the RS-16 zone district;
- C. Limited child care homes in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8 and RS-6 zone districts;
- D. Houses of worship in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6, RM-8, RM-6, P-1, P-2, GB-1, GB-2 and GB-3 zone districts;
- E. Public and private non-profit schools in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6 and RM-8 zone districts;
- F. Board of Education administrative office uses in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6 and RM-8 zone districts;
- G. Facilities of non-profit charter membership organizations and the offices of charitable organizations in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6, RM-12, RM-8, RM-6, RM-6D, P-1, P-2, CBD, GB-1, GB-2, GB-3 and C zone districts;

- H. Gasoline filling stations and gasoline service stations in the GB-2, GB-3 and C zone districts;
- I. Public garages in the GB-2, GB-3 and C zone districts;
- J. Automatic car washes and drive-through lubricating establishments in the GB-2 and C zone districts;
- K. Automobile body repair shops and automobile painting facilities in the GB-2 and C zone districts;
- L. Lumber, building material and garden center sales in the C zone district;
- M. Residential type public utility facilities in all of the zone districts;
- N. Industrial type public utility facilities in the O-3 and C zone districts;
- O. Freestanding cellular telecommunications antennas in the O-2, O-3, C and GB-2 zone districts and roof-mounted cellular telecommunications antennas in the RM-12, RM-8, RM-6, RM-6D, RA-1, RA-2, RA-3, RA-4, RA-5A, RA-5B, P-1, P-2, O-1, O-2, O-3, C, GB-1, GB-2, GB-3 and C zone districts; and,
- P. Any use within the flood plain which is also a permitted use within the zone district for that location.
- Q. Age-restricted multi-family housing on the ground floor in the CBD zone district. **[Added 12-14-04 by Ord. No. 1843]**

§ 18.03. PROCEDURE FOR CONDITIONAL USE APPROVAL.

The review by the Planning Board of a conditional use shall include any required site plan review, and the procedure for obtaining conditional use approval shall be in accordance with the procedures in Article 8 for processing and review of site plan and subdivision applications in this ordinance, unless the context clearly indicates otherwise or unless contrary to law, including but not necessarily limited to the following:

- A. the filing procedures in § 8.03;
- B. the procedures for filing simultaneous applications in § 8.04;
- C. the completeness review procedures in § 8.05;
- D. the general review procedures in § 8.06;
- E. the conditional approval provisions in § 8.13;
- F. the default approval provisions in § 8.14;
- G. the provisions for extensions and tolling of approvals in § 8.15 and § 8.16, respectively; and,

- H. the provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in § 8.24, § 8.25, § 8.26 and § 8.27, respectively.

§ 18.04. APPLICATION OF CONDITIONAL USE STANDARDS.

The requirements of this Article shall be considered the minimum standards which must be complied with in order for the respective conditional uses or structures to be permitted in the various zone districts. In applying the standards, the following shall apply:

- A. **Conflict with other land use regulations.** In the event that any conditional use standard conflicts with any requirement of this ordinance not contained in this Article 18, the conditional use standard shall apply, unless the context indicates otherwise.
- B. **Reference to other regulation.** If a standard in any other article of this ordinance, or in any other law or document, is incorporated in this article by reference for any conditional use, such referenced standard shall be construed to be a conditional use standard. A violation of any such referenced standard shall be considered a violation of a conditional use standard.
- C. **Applicability of other land use regulation not referenced herein.** If any requirement of this ordinance not contained or referenced in this Article 18 does not conflict with the conditional use requirements, said ordinance requirement shall be applicable to the conditional use, unless the context indicates otherwise. A violation of any requirement of this ordinance applicable to any conditional use, but which requirement is not referenced in this Article 18, shall not be considered to be a violation of a conditional use standard.
- D. **Existing conditional uses.** If conditional use approval is sought for 1) an existing use, building or structure which is regulated as a conditional use by this article and which existed at the time of the adoption of this ordinance, or 2) for any enlargement or expansion of an existing conditional use, or 3) for the conversion of an existing conditional use to another conditional use, there must be full compliance with all the requirements of this article in the same manner as if a new conditional use, building or structure were proposed. In the event that there is not full compliance with this article, the use and/or structure shall remain as a nonconforming use and/or structure, and any expansion, enlargement or conversion shall not be permitted, as applicable.

- E. **More than one conditional use on a lot.** In the event that more than one conditional use is proposed on a lot, or which, in the opinion of the Planning Board, could reasonably be anticipated to involve more than one conditional use, the more restrictive conditional use standard shall apply. In applying this provision, the Planning Board shall not be limited to the conditions and standards of any one of the conditional uses involved, but may apply a specific standard or condition from either or any of the uses involved. It is not intended that this provision apply to part-time schools on the same lot with and which are conducted as an adjunct or supplement to the activities of a house of worship or religious organization, such as, but not limited to, Sunday schools, nursery schools, catechism, Hebrew schools, adult education and the like, or as an adjunct or supplement to the activities or programs of chartered membership organizations.
- F. **Conditional use and non-conditional use on the same lot.** No building or structure may be used for both a conditional use and another use which is not a conditional use. A combination of conditional use and other use shall be permitted on the same lot in a particular zoning district only if all of the following requirements are complied with:
1. The conditional use shall comply with all applicable conditional use requirements.
 2. The non-conditional use shall be a permitted use in the zone district.
 3. Each use shall occupy a separate building or structure on the lot.
 4. Each such building or structure considered separately shall meet the requirements for the use proposed for that building or structure as provided by this article or by any other applicable zoning regulation.
- G. **Exemption of parks, public playgrounds and municipal uses of all kinds.** Parks, public playgrounds and municipal uses of all kinds are not considered conditional uses and are permitted in all zones without the necessity for use approval, conditional use approval or site plan review and approval by the Planning Board or the Board of Adjustment.

§ 18.05. RESIDENTIAL CLUSTER DEVELOPMENT.

Residential cluster development shall be permitted only in the RS-40 zone district and only if the following requirements are complied with. The option to develop either a conventional subdivision or residential cluster shall be the choice of the developer, and the following requirements apply only if the residential cluster option is exercised. Notwithstanding the above, the Planning Board need not

approve any residential cluster development if, in its sole discretion, such development would not be suitable for the orderly development of the area in which it is located, or would not conform to the general development pattern of existing community facilities or school-park lands as shown on the Master Plan or Official Map of the Town.

- A. **Minimum tract area.** The minimum tract area for a cluster development shall be one hundred (100) acres.
- B. **Permitted uses.** All uses and structures permitted within the RS-40 zone district shall be permitted within a residential cluster development, subject to the same regulations that apply to such uses and structures when part of a conventional development except as specifically regulated otherwise herein. In addition, there shall be permitted on the open space portions of a cluster development such uses and structures that are designed to be incidental to the natural openness of the land, and intended for recreational or conservation purposes.
- C. **Maximum density.** The number of dwelling units and/or building lots shall not exceed one (1) for every gross acre of land in the development.
- D. **Minimum open space.** The amount of open space to be set aside shall be not less than twenty-four thousand (24,000) square feet times the number of dwelling lots in the subdivision.
- E. **Open space ownership and maintenance.** Open space which is set aside in a residential cluster subdivision shall either be deeded to the Town of Westfield for open space, or shall be owned and maintained by an open space organization. Notwithstanding the above, the Town of Westfield may, in its sole discretion, refuse to accept any dedication of open space if the governing body determines that such dedication is not in the best public interest of the Town. Ownership and maintenance of such open space shall be subject to the following regulations:
 - 1. Dedication of open space to the Town. If open space is to be dedicated to the Town, no area to be deeded to the Town shall be less than ten (10) acres, unless the area is to be joined to an existing or proposed parcel of Town land, the aggregate size of which shall not be less than ten (10) acres, unless a smaller area is shown on the Master Plan or Official Map of the Town. The area to be deeded for open space under the terms of this section shall be at a location and of a shape as approved by the Planning Board.
 - 2. Ownership of open space by a private open space organization. If open space is to be owned by a private organization, the open space to be set aside shall be owned and maintained by the organization for the benefit of owners and residents of the development. The organization

shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development. Thereafter, such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the Town of Westfield.

§ 18.06. ASSISTED LIVING FACILITIES.

Assisted living facilities are permitted as a conditional use in the RS-16 zone district only if all of the following conditions are complied with:

- A. **Licensing.** The facility shall be licensed by the N.J. Department of Community Affairs as a Class C rooming and boarding home or by the N.J. Department of Health as an assisted living residence.
- B. **Minimum lot area.** The lot for such facility shall contain a minimum area of five (5) acres.
- C. **Maximum density.** There shall be no more than fifteen (15) residential units for each acre of lot area; provided, however that there shall be no more than a total of seventy-seven (77) residential units.
- D. **Maximum floor area ratio.** The total habitable floor area within all buildings or structures on any lot shall not be more than twenty-five percent (25%) of the total lot area.
- E. **Maximum number of habitable floors.** No principal building shall exceed two (2) habitable floors, exclusive of basement.
- F. **Age restriction.** The assisted living facility shall limit residence to persons who are at least fifty (50) years of age.

§ 18.07. LIMITED CHILD CARE HOMES.

Limited child care homes are permitted only in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8 and RS-6 zone districts and only if they comply with all of the following requirements. Notwithstanding any other provision to the contrary, limited child care homes shall be exempt from the requirements applicable to home occupations unless any such requirement is provided in this section.

- A. The limited child care home shall be located within and accessory to a single family detached dwelling.
- B. No other principal use shall be permitted on the same lot.
- C. No other home occupation shall be permitted on the same lot.

- D. No less than fifty percent (50%) of the total habitable floor area of the dwelling shall be used exclusively as a residence.
- E. The operator of the limited child care home shall reside in the single family detached dwelling.
- F. Not less than six (6) nor more than eight (8) children shall be cared for at any one time, excluding those children that are excluded by definition from the total number being cared for.
- G. The children being cared for shall not exceed twelve (12) years of age.
- H. The number of employees shall not exceed the minimum number of employees required by the Division of Youth and Family Services in the State Department of Human Services.
- I. The limited child care home shall not operate before 7 a.m. nor after 7 p.m. on any weekday, nor at any time on Saturday or Sunday.
- J. The limited child care home shall maintain the appearance of a single family detached dwelling. There shall be no change in the outside appearance of the building or property, or other visible evidence of the conduct of such use.
- K. There shall be no signs except those permitted for the single family detached dwelling on the lot.

§ 18.08. HOUSES OF WORSHIP.

Houses of worship and uses and structures accessory to houses of worship on the same site are permitted only in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6, RM-8, RM-6, P-1, P-2, GB-1, GB-2 and GB-3 zone districts and only if they comply with all of the following requirements. It is not intended that part-time schools which are conducted as an adjunct or supplement to the religious activities of a church, religious organization, or place of worship, such as, but not limited to, Sunday schools, nursery schools, catechism, Hebrew schools, adult education, and the like, create a mixed use as defined herein for the premises on which they are conducted.

- A. **Charter.** The application shall be accompanied by the existing or proposed charter and by-laws of the organization and such other material as may be required to guarantee to the satisfaction of the Planning Board the following:
 - 1. The organization is or will be a bona fide non-profit religious group organized primarily for the benefit of its membership, and such other activities normally carried on by religious groups.

2. The organization has been granted exemption from taxation under the laws of both the State of New Jersey and the United States.
 3. The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:
 - a. The premises may be made available on a rental basis for meetings of other groups, private social functions and the like; and
 - b. The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purposes of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Town Council of the Town of Westfield, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This paragraph shall not prevent the organization from hiring or otherwise engaging profit-making organizations to conduct fund raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee; and
 - c. Sale of religious articles or items having a relation to the cultural or ethnic background of the members of the faith are permitted on a continuous basis, provided that such sales are conducted inside the building or structure.
- B. **Minimum lot area.** Every lot shall contain a minimum area of seventy-five thousand (75,000) square feet.
- C. **Minimum lot frontage.** Every lot shall have a minimum frontage of two hundred and twenty-five (225) feet.
- D. **Maximum coverage by improvements.** The total coverage of the lot by all buildings, structures, sidewalks, parking areas, driveways and other improvements shall not exceed fifty percent (50%) of the total lot area.
- E. **Front yard.** There shall be a front yard equal to the front yard setback requirement for the zone in which the site is located.

- F. **Minimum side yard.** There shall be a minimum side yard which is not less than the height of the building or structure, or twenty-five (25) feet, whichever is greater.
- G. **Minimum rear yard.** There shall be a minimum rear yard which is not less than the height of the structure or fifty (50) feet, whichever is greater.
- H. **Reconstruction of a house of worship.** Notwithstanding any provisions of this Section to the contrary, in the case of an accidental partial or complete destruction of a house of worship or rectories or parish houses or convents existing on January 1, 1978, the structure or building so destroyed may be reconstructed on the same site and as it existed prior to the accidental destruction, even though it may not conform to all the conditions of that conditional use for that zone. The phrase "reconstructed ... as it existed" for the purposes of this subsection shall be deemed to mean that the structure or building may be reconstructed with ground coverage not in excess of that of the former building or structure and with usable floor space on all floors not in excess of that which existed in the former building or structure, and with a height not to exceed that which existed in the former building or structure. It shall not be necessary that the replacement be identical to the former structure in any other particulars, provided that the replacement shall be no less conforming to this Ordinance than the former structure.

§ 18.09. PUBLIC AND PRIVATE NON-PROFIT SCHOOLS.

Public schools covering any or all grades pre-kindergarten through grade twelve (12), and full-time non-profit private schools covering any and or all grades pre-kindergarten through grade twelve (12) operated by charitable, religious or eleemosynary organizations, which are not conducted as a business, and which are intended to satisfy State-mandated educational requirements, are permitted only in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6 and RM-8 zone districts and only if they comply with all of the following requirements. This Section 18.09 is not intended to apply to part-time schools which are conducted as an adjunct or supplement to the religious activities of a church, religious organization or place of worship, such as, but not limited to, Sunday schools, nursery schools, catechism or Hebrew schools, adult education, or the like, or as an adjunct or supplement to the activities or programs of chartered membership organizations, but is intended to apply to educational institutions, whether or not operated in conjunction with religious organizations, churches, or places of worship, or chartered membership organizations which are operated on a full-time basis, which offer general academic instruction or training in a skill, trade or vocation, and which are intended to fulfill State-mandated educational requirements.

A. **Charter.** The application shall be accompanied by the existing or proposed charter and by-laws of the organization and such other material as may be required to guarantee to the satisfaction of the Planning Board, the following:

1. The organization is or will be a bona fide non-profit school organized for educational purposes and such other activities normally carried on by such schools.
2. The organization has been granted exemption from taxation under the laws of both the State of New Jersey and the United States.
3. The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:
 - a. The premises may be made available on a rental basis for meetings of other groups, private social functions and the like.
 - b. The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purpose of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Town Council of the Town of Westfield, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This paragraph shall not prevent the organization from hiring or otherwise engaging profit-making organizations to conduct fund raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee.
 - c. Sale of items, products or materials required for the educational programs or welfare of the students, or accessory to and having a relation to the activities conducted on the premises, such as, but not limited to, books, art materials and school supplies, or tickets for student activities, or other school-related events, or food for school lunches, are permitted on a continuous basis, provided such sales are conducted inside the building or structure.

- B. **Minimum lot area.** Every lot shall contain a minimum area of ninety thousand (90,000) square feet, plus an additional forty-five thousand (45,000) square feet for every one hundred (100) pupils or portion thereof of maximum design capacity.
- C. **Minimum lot frontage.** Every lot shall have a minimum frontage of two hundred and twenty-five (225) feet.
- D. **Maximum coverage by buildings and above-grade structures.** The total coverage of the lot by buildings and above-grade structures shall not exceed fifteen percent (15%) of the total lot area.
- E. **Maximum coverage by improvements.** The total coverage of the lot by all buildings, structures, sidewalks, parking areas, driveways or other improvements shall not exceed forty percent (40%) of the total lot area.
- F. **Minimum front yard.** There shall be a minimum front yard setback equal to two (2) feet for each one (1) foot of building or structure height, or forty (40) feet, whichever is greater.
- G. **Outdoor use areas.** Athletic fields, playgrounds and any other outdoor use area, excluding parking areas, shall be located at least forty (40) feet from any lot line.

§ 18.10. BOARD OF EDUCATION ADMINISTRATIVE OFFICE USE.

Board of Education administrative office use is permitted only in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6 and RM-8 zone districts and only if all of the following requirements are complied with.

- A. **Maximum coverage by improvements.** The total lot coverage by all buildings, structures, sidewalks, parking areas, driveways and other improvements shall not exceed fifty percent (50%) of the total lot area.
- B. **Maximum coverage by buildings and above-grade structures.** The total lot coverage by buildings and above-grade structures shall not exceed twenty-five percent (25%) of the total lot area.
- C. **Front yard.** There shall be a front yard equal to the front yard required in the zone in which the site is located.
- D. **Minimum side yard.** There shall be a minimum side yard equal to 1) the height of the building or structure, or 2) twenty-five (25) feet, whichever is greater.
- E. **Minimum rear yard.** There shall be a minimum rear yard equal to 1) the height of the building or structure, or fifty (50) feet, whichever is greater.

§ 18.11. NON-PROFIT CHARTERED MEMBERSHIP ORGANIZATIONS.

Buildings operated by chartered membership organizations for the benefit of the public and not for profit, and the office or offices of charitable organizations are permitted only in the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6, RM-12, RM-8, RM-6, RM-6D, P-1, P-2, CBD, GB-1, GB-2 and GB-3 zone districts and only if all of the following requirements are complied with. It is not intended that part-time schools which are conducted as an adjunct or supplement to the purposes and objective of the organization create a mixed use as defined herein for the premises on which they are conducted.

A. **Certificate of incorporation.** The application shall be accompanied by the existing or proposed Certificate of Incorporation and By-laws of the organization and such material as may be required to guarantee to the satisfaction of the Planning Board, the following:

1. The organization is, or will be, a bona fide non-profit group organized solely for charitable purposes or for the benefit and enjoyment of its members who shall be primarily residents of Westfield and the surrounding communities.
2. The use will not involve the sale or consumption of liquor or alcoholic beverages in any form, unless the Planning Board specifically finds that such sales or consumption will not be detrimental to the character of the area and the safety and welfare of the public.
3. The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:
 - a. The premises may be made available on a rental basis for meetings of other groups, private social functions and the like.
 - b. The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purposes of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Town Council of the Town of Westfield, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This paragraph shall not prevent the organization from hiring or otherwise engaging profit-

making organizations to conduct fund-raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee.

- c. Sale of items, products, or materials related to or accessory to the primary function or activity of the organization conducted on the premises, such as, but not limited to, food or alcoholic beverages (if the organization holds a license for the sale of same), athletic equipment, and the like, are permitted on a continuous basis, provided such sales are conducted inside the building or structure.
- 4. Overnight accommodations shall not be provided.
- 5. The hours of use are fixed in a manner in which the property rights of nearby property owners will not be adversely affected.
- 6. Activities of the organization will be carried on primarily within an enclosed building or structure.
- B. **Street access.** The subject property shall be located on, and driveway access shall be provided to, an arterial or collector street as designated by the Town Master Plan.
- C. **Minimum lot area.** There shall be a minimum lot area of forty-five thousand (45,000) square feet, plus an additional one hundred and fifty (150) square feet of lot area for each fifteen (15) square feet of gross floor area in excess of one thousand five hundred (1,500) square feet of gross floor area.
- D. **Minimum lot frontage.** There shall be a minimum lot frontage of two hundred (200) feet.
- E. **Maximum coverage by buildings and above-grade structures.** The coverage of the lot by buildings and above-grade structures shall not exceed twenty percent (20%) of the total lot area.
- F. **Maximum coverage by improvements.** The coverage of the lot by all buildings, structures, sidewalks, parking areas, driveways, and other improvements shall not exceed fifty percent (50%) of the total lot area.
- G. **Front yard.** There shall be a front yard equal to the front yard required in the zone in which the site is located.
- H. **Minimum side yard.** There shall be a minimum side yard equal to 1) the height of the building or structure, or 2) twenty-five (25) feet, whichever is greater.

- I. **Minimum rear yard.** There shall be a minimum rear yard equal to 1) the height of the building or structure, or 2) fifty (50) feet, whichever is greater.

§ 18.12. GASOLINE FILLING STATIONS AND GASOLINE SERVICE STATIONS.

Gasoline filling stations and gasoline service stations are permitted only in the GB-2, GB-3 and C zone districts and only if all of the following requirements are complied with:

- A. **Minimum lot area.** There shall be a minimum lot area of fifteen thousand (15,000) square feet.
- B. **Minimum lot frontage.** There shall be a minimum lot frontage of one hundred (100) feet.
- C. **Minimum front yard.** There shall be a minimum front yard of fifty (50) feet, within which no building, pump, mechanical equipment or other appliance shall be located.
- D. **Minimum side yard.** There shall be a minimum side yard of twenty-five (25) feet, within which no building shall be located.
- E. **Minimum rear yard.** There shall be a minimum rear yard of twenty-five (25) feet, within which no building.
- F. **Maximum coverage by buildings and above-grade structures.** The coverage of the lot by buildings, above-grade structures, pumps and mechanical equipment shall not exceed twenty percent (20%) of the total lot area.
- G. **Driveway access.** There shall be a maximum of two (2) entrance and exit driveways for each one hundred (100) feet of lot frontage on any street. Driveways shall be at least fifty (50) feet, measured along the right-of-way line, from the intersection of the right-of-way lines of any public streets. No driveway shall be located such that vehicles entering or exiting the driveway are required to cross more than one lane of moving traffic.
- H. **Outdoor activities limited.** All principal or accessory uses on the site, except for the parking of motor vehicles, permitted outdoor storage, the filling of tires with compressed air and the dispensing of fuel, motor oil or other fluids while the vehicle is being refueled, shall be conducted inside an enclosed building.
- I. **Outdoor display.** Accessory goods for sale may be displayed out-of-doors on the pump island and the building island only and shall be stored in a suitable rack or container.

- J. **Storage of hazardous materials.** Bulk storage of hazardous and flammable materials shall comply with the provisions of § 13.05.
- K. **Sale of food items.** The sale of food or beverages for human consumption shall be prohibited, except sales through automatic vending machines.
- L. **Car washing equipment.** There shall be no mechanical or automatic car washing facility located on the same lot.
- M. **Hours of operation.** When the lot upon which a gasoline filling station or gasoline service station is located is within one hundred (100) feet of a lot that is used, intended or suitable for use as, or zoned for use as a residence, the filling station or service station shall not be permitted to operate or to be open to the public between the hours of 11:00 p.m. and 6:00 a.m. on any day.

§ 18.13. PUBLIC GARAGES.

Public garages are permitted only in the GB-2, GB-3 and C zone districts and only if all of the following requirements are complied with:

- A. **Minimum lot area.** There shall be a minimum lot area of fifteen thousand (15,000) square feet.
- B. **Minimum front yard.** There shall be a minimum front yard of fifty (50) feet, within which no building, mechanical equipment or other appliance shall be located.
- C. **Minimum side yard.** There shall be a minimum side yard of twenty-five (25) feet, within which no building shall be located.
- D. **Minimum rear yard.** There shall be a minimum rear yard of twenty-five (25) feet, within which no building shall be located.
- E. **Maximum coverage by buildings and above-grade structures.** The coverage of the lot by buildings, above-grade structures and mechanical equipment shall not exceed twenty percent (20%) of the total lot area.
- F. **Fuel dispensing prohibited.** The dispensing or storage of gasoline or other motor vehicle fuels shall be prohibited.
- G. **Outdoor activities limited.** All principal or accessory uses on the site, except for the parking of motor vehicles, permitted outdoor storage and the filling of tires with compressed air shall be conducted inside an enclosed building.

- H. **Storage of hazardous materials.** No tanks or other containers for the storage of hazardous or flammable materials, either liquid or solid, shall be installed underground. Aboveground storage of hazardous or flammable materials shall be required to comply with all applicable provisions of the Fire Subcode.
- I. **Hours of operation.** When the lot upon which a public garage is located is within one hundred (100) feet of a lot that is used, intended or suitable for use as, or zoned for use as a residence, the public garage shall not be permitted to operate or to be open to the public between the hours of 11:00 p.m. and 6:00 a.m. on any day.

§ 18.14. AUTOMATIC CAR WASHES AND DRIVE-THROUGH LUBRICATING ESTABLISHMENTS.

Automatic car washes and drive-through lubricating establishments are permitted only in the GB-2 and C zone districts and only if all of the following requirements are complied with:

- A. **Minimum lot area.** There shall be a minimum lot area of fifteen thousand (15,000) square feet.
- B. **Minimum front yard.** There shall be a minimum front yard of fifty (50) feet, within which no building, mechanical equipment or other appliance shall be located.
- C. **Minimum side yard.** There shall be a minimum side yard of twenty-five (25) feet, within which no building shall be located.
- D. **Minimum rear yard.** There shall be a minimum rear yard of twenty-five (25) feet, within which no building shall be located.
- E. **Maximum coverage by buildings and above-grade structures.** The coverage of the lot by buildings, above-grade structures and mechanical equipment shall not exceed twenty percent (20%) of the total lot area.
- F. **Prohibited activities.** The dispensing or storage of gasoline or other motor vehicle fuels and the service or repair of motor vehicles, except for the washing, lubricating and adding of other fluids that is incidental to the principal use shall be prohibited. The washing of vehicles other than passenger vehicles shall be prohibited.
- G. **Storage of hazardous materials.** Bulk storage of hazardous and flammable materials shall comply with the provisions of § 13.05.

- H. **Minimum vehicle stacking capacity.** Car washes shall have a minimum stacking capacity of ten (10) vehicles for each washing lane. Drive-through lubricating establishments shall have a minimum stacking capacity of five (5) vehicles for each service lane.
- I. **Hours of operation.** When the lot upon which a car wash or drive-through lubrication establishment is located within one hundred (100) feet of a lot that is used, intended or suitable for use as, or zoned for use as a residence, the car wash or drive-through lubricating establishment shall not be permitted to operate or to be open to the public between the hours of 11:00 p.m. and 6:00 a.m. on any day.

§ 18.15. AUTOMOBILE BODY REPAIR SHOPS AND AUTOMOBILE PAINTING FACILITIES.

Automobile body repair shops and automobile painting facilities are only permitted in the GB-2 and C zone districts and only if all of the following requirements are complied with:

- A. **Minimum lot area.** There shall be a minimum lot area of fifteen thousand (15,000) square feet. Notwithstanding the foregoing, if the Board finds that the nature of the particular use proposed, either by virtue of scale, intensity of use, hazard or other conditions, is such that a larger site is in the public interest, then it shall impose such additional requirements.
- B. **Minimum lot frontage.** There shall be a minimum lot frontage of one hundred (100) feet.
- C. **Minimum front yard.** There shall be a minimum front yard of fifty (50) feet, within which no building, mechanical equipment or other appliance shall be located.
- D. **Minimum side yard.** There shall be a minimum side yard of twenty-five (25) feet, within which no building, mechanical equipment or other appliance shall be located.
- E. **Minimum rear yard.** There shall be a minimum rear yard of twenty-five (25) feet, within which no building, mechanical equipment or other appliance shall be located.
- F. **Maximum coverage by buildings and above-grade structures.** The coverage of the lot by buildings, above-grade structures and mechanical equipment shall not exceed twenty percent (20%) of the total lot area.
- G. **Maximum height of buildings.** No building shall exceed one (1) story in height.
- H. **Fuel dispensing prohibited.** The dispensing or storage of gasoline or other motor vehicle fuels shall be prohibited.

- I. **Outdoor activities limited.** All principal or accessory uses on the site, except for the parking of motor vehicles, permitted outdoor storage or the filling of tires with compressed air, shall be conducted inside an enclosed building.
- J. **Storage of hazardous materials.** No tanks or other containers for the storage of hazardous or flammable materials, either liquid or solid, shall be installed underground. Aboveground storage of hazardous or flammable materials shall be required to comply with all applicable provisions of the Fire Subcode.
- K. **Outdoor storage.** All automobile body repair shops and painting facilities shall comply with Chapter 19 of the Town Code concerning the storage of inoperable motor vehicles. In addition, such facilities shall install appropriate fencing and screening around all areas where inoperable motor vehicles are stored for any period of time.
- L. **Hours of operation.** When the lot upon which an automobile body repair shop or painting facility is located is within one hundred (100) feet of a lot that is used, intended or suitable for use as, or zoned for use as a residence, the automotive service or repair shop shall not be permitted to operate or to be open to the public between the hours of 11:00 p.m. and 6:00 a.m. on any day.

§ 18.16. LUMBER, BUILDING MATERIAL AND GARDEN CENTER SALES.

Lumber, building material and garden center sales is only permitted in the C zone district and only if all outdoor storage meets the applicable requirements of Article 15.

§ 18.17. RESIDENTIAL TYPE PUBLIC UTILITY FACILITIES.

Residential type public utility facilities and uses are permitted in all zone districts, but only if they comply with the following requirements:

- A. Required location of structure. Residential type public utility facilities may be freestanding, provided that antennas and related equipment for a residential type public utility facility may be mounted on the roof of certain existing buildings as follows:
 - 1. In the non-residential zone districts, antennas and related equipment for residential type public utility facilities are permitted if they are mounted on the roof of any existing building, if said building is at least forty-five (45) feet in height.
 - 2. In the residential zone districts, antennas and related equipment for residential type public utility facilities are permitted if they are mounted on the roof of an

existing multi-family apartment building containing at least five (5) dwelling units, or on a non-residential building, if said buildings are at least forty-five (45) feet in height.

- B. Proof of need. Proof shall be furnished that the proposed installation in the specific location is necessary for the proper functioning of the public utility system and for the satisfactory and convenient provision of service to the neighborhood in which the facility is to be located.
- C. Maximum height of structures. Buildings shall not exceed fifteen (15) feet in height. Other equipment and structures shall not exceed thirty-eight (38) feet in height, except for antennas, which shall not exceed forty-five (45) feet in height above the ground. Antennas and related equipment mounted on an existing building roof, as permitted herein, shall not exceed the height of such roof by more than twenty (20) feet.
- D. Minimum front yard. There shall be a minimum front yard equal to the front yard required in the zone in which the site is located.
- E. Minimum side yard. Buildings shall be subject to the applicable side yard requirement in the zone district. For other above-grade structures or equipment, there shall be a minimum side yard equal to the height of the structure or equipment, or fifteen (15) feet, whichever is greater.
- F. Minimum rear yard. Buildings shall be subject to the applicable rear yard requirement in the zone district. For other above-grade structures or equipment, there shall be a minimum rear yard equal to the height of the structure or equipment, or the applicable rear yard requirement in the zone district, whichever is greater.
- G. Trip generation. The proposed use, structure or equipment shall not generate more than ten (10) trips per day for any purpose, including but not limited to the operation, maintenance, servicing or monitoring of any improvements on the site.
- H. Noise levels. The proposed use, structure or stationary equipment shall comply with the maximum permissible sound levels applicable to residential sound sources set forth in the Union County Regional Environmental Health Commission Noise Control Ordinance.
- I. Exterior appearance of structures. The exterior appearance of any building or structure required for such use shall be compatible with the character of buildings or structures in the area in which the site is located, as determined by the Board.

§ 18.18. INDUSTRIAL TYPE PUBLIC UTILITY FACILITIES.

Industrial type public utility facilities and uses are permitted in the O-3 and C zone districts, but only if they comply with the following minimum requirements:

- A. Required location of structure. Industrial type public utility facilities may be freestanding, provided that antennas and related equipment for industrial type public utility facilities may be mounted on the roof of an existing building, if said building is at least forty-five (45) feet in height.
- B. Proof of need. Proof shall be furnished that the proposed installation in the specific location necessary for the proper functioning of the public utility system and for the satisfactory and convenient provision of service to the neighborhood in which the facility is to be located.
- C. Maximum height of structures. Buildings shall be subject to the height restrictions applicable in the zone district. Other freestanding structures and equipment shall not exceed forty-five (45) feet in height, except for freestanding antennas in the O-3 zone district, which shall not exceed one hundred and twenty-five (125) feet in height. Antennas mounted on an existing building roof, as permitted herein, shall not exceed the height of such roof by more than twenty (20) feet.
- D. Front yard. There shall be a front yard equal to the front yard required in the zone in which the site is located.
- E. Minimum side yard. Buildings shall be subject to the applicable side yard requirement in the zone district. For other above-grade structures or equipment, there shall be a minimum side yard equal to the height of the structure or equipment, or fifteen (15) feet, whichever is greater.
- F. Minimum rear yard. Buildings shall be subject to the applicable rear yard requirement in the zone district. For other above-grade structures or equipment, there shall be a minimum rear yard equal to the height of the building or above-grade structure or equipment, or the rear yard required in the zone in which the site is located, whichever is greater.
- G. Noise levels. The proposed use, structure or stationary equipment shall comply with the maximum permissible sound levels applicable to commercial sound sources set forth in the Union County Regional Environmental Health Commission Noise Control Ordinance.

- H. Exterior appearance of structures. The exterior appearance of any building or structure required for such use shall be compatible with the character of buildings or structures in the area in which the site is located, as determined by the Board.

§ 18.19. CELLULAR TELECOMMUNICATIONS ANTENNAS.

Cellular telecommunications antennas are permitted only if all of the following requirements are complied with:

- A. Permitted location; type of structure. Freestanding cellular telecommunications antennas are permitted in the O-2, O-3, C and GB-2 zone districts, and in the RM-12, RM-8, RM-6, RM-6D, RA-1, RA-2, RA-3, RA-4, RA-5A, RA-5B, P-1, P-2, O-1, O-2, O-3, C, GB-1, GB-2, GB-3 and C zone districts when mounted on the roof of certain existing buildings as follows:
1. In the above non-residential zone districts, cellular telecommunications antennas are permitted if they are mounted on the roof of existing buildings, if said buildings are at least forty-five (45) feet in height.
 2. In the above residential zone districts, cellular telecommunications antennas are permitted if they are mounted on the roof of existing multi-family apartment buildings containing at least five (5) dwelling units or on non-residential buildings, if said apartment or non-residential buildings are at least forty-five (45) feet in height.
- B. Proof of need and minimum impact. The applicant shall be required to demonstrate that the development is the minimal necessary to provide adequate communications as may be authorized by the Federal Communications Commission. Included as part of this requirement, the applicant shall demonstrate at least, but not necessarily limited to, the following:
1. that the technology proposed is the least visually intrusive of various suitable technologies;
 2. that the height of the antennas is the minimum necessary;
 3. that colocation of the antenna on other existing antenna structures, or that location at a less visible location, or that the use of microcells, providing more numerous antennas at lower heights, either within or outside the Town of Westfield, is either not practical in order to provide adequate communication or that the visual impact to the community on the proposed site is less than would exist at such alternative locations; and,

4. that the use of digital technology for other existing and pending antennas in the area would not eliminate the need for the proposed antenna.
- C. Maximum height. Buildings shall be subject to the applicable height limit in the zone district. The height of antennas and related structures and equipment other than buildings, where permitted, shall be subject to the following height restrictions:
1. Freestanding antennas and related structures and equipment, other than buildings, in the O-2 and O-3 zone districts shall not exceed one hundred and twenty-five (125) feet in height.
 2. Freestanding antennas and related structures and equipment, other than buildings, in the C and GB-2 zone districts shall not exceed forty-five (45) feet in height.
 3. The height of antennas and related structures and equipment, other than buildings, when mounted on the roof of an existing building, as permitted herein, shall not exceed the height of such roof by more than twenty (20) feet.
- D. Required lot location in the C and GB-2 zone districts. In the C and GB-2 zone districts, freestanding cellular telecommunications antennas shall only be permitted on lots which directly abut the railroad.
- E. Required yard location and minimum setbacks. The following required yard locations and minimum setbacks shall apply:
1. Buildings shall be subject to the applicable setbacks in the zone district.
 2. Freestanding above-grade structures and equipment, other than buildings, including but not limited to antennas, shall be located in the rear yard. Where no rear yard exists, such structures and equipment shall be located within fifty (50) feet of the rear lot line.
 3. Freestanding above-grade structures and equipment other than buildings, including but not limited to antennas, when up to forty-five (45) feet in height, shall be set back at least the height of such structure or equipment from the side lot line, or at least the applicable side yard setback in the zone district, whichever is greater.
 4. Freestanding above-grade structures and equipment other than buildings, including but not limited to antennas, when greater than forty-five (45) feet in height, shall be set back at least forty-five (45) feet, or one-half ($\frac{1}{2}$) the

height of such structure or equipment from the side lot line, or at least the applicable side setback in the zone district, whichever is greater.

5. Freestanding above-grade structures and equipment other than buildings, including but not limited to antennas, shall be set back at least the height of such structure or equipment from any residential property line.
 6. Antennas and related structures and equipment, when mounted on an existing building roof as permitted herein, shall be located so as to minimize any detrimental visual impact, as determined to be appropriate by the Board in the particular situation.
- F. Mitigation of visual impact. The base of the antenna support structure and any related structures and equipment shall be screened from the street and adjacent properties in a manner acceptable to the Board. If deemed necessary by the Board to mitigate the visual impact of the antenna and related structures and equipment, the color, materials and design of the entire antenna and related structures and equipment shall be required to be modified in appearance so as to blend in with the surrounding environment, as determined by the Board to be appropriate in the particular situation. The foregoing may include, but shall not necessarily be limited to, such modifications as special paint treatment, concealment through such architectural means as a bell tower, steeple, etc., or the use of camouflage through simulated foliage so as to appear as a tree.
- G. May be additional principal use on lot. Notwithstanding any provisions of this ordinance to the contrary, a cellular telecommunications antenna or antennas are permitted on the same lot as any other permitted principal use or structure; provided, however, that no cellular telecommunications antenna shall be permitted on the same lot as any residential structure containing less than five (5) dwelling units.
- H. Design for future colocation. Any proposed cellular telecommunications antenna and related structures shall be designed, structurally, electrically and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users if the antenna is over one hundred (100) feet in height, or for at least one (1) additional user if the antenna is over sixty (60) feet in height. The antennas and related structures shall be designed for future rearrangement of antennas and to accept antennas mounted at varying heights. If the foregoing design for colocation requires additional antenna height beyond that necessary for a single-user installation or beyond that permitted above, the Board, in determining the acceptable design, shall balance the benefits and probability of colocation against any detriments resulting from such additional antenna height.

The foregoing requirement shall also include a letter of commitment by the applicant, submitted prior to any approval by the Board, to lease excess space on the facility to other potential users at reasonable rental rates and on reasonable terms. The letter shall commit the owner of the antenna and related structures and equipment, as well as any successors in interest.

- I. Compliance with radiation emission standards. The applicant shall demonstrate that the proposed antenna and related structures and equipment complies with all applicable State and Federal regulations of electromagnetic radiation levels. Thereafter, at least every two (2) years after issuance of the initial certificate of occupancy, the applicant shall demonstrate that the antenna and related structures and equipment continues to comply with such applicable regulations.
- J. Abandonment; removal. All cellular telecommunications antennas and related structures and equipment, shall be removed when same are unused or abandoned. Such removal shall occur within six (6) months of such lack of use or abandonment. A copy of the relevant portions of a signed lease which requires the removal of the antenna and related structures and equipment upon cessation of operations shall be submitted at the time of the application. In the event that the antenna and related structures and equipment are not removed as required, such structures and equipment may be removed by the Town of Westfield and the costs of same shall be assessed against the property.

§ 18.20. USES WITHIN THE FLOOD PLAIN.

Notwithstanding any zone district regulations to the contrary, any use located within the Flood Plain which is also a permitted use pursuant to the zone district regulations shall only be permitted if all of the following requirements of the Storm Water Control and Flood Plain regulations of this Ordinance are complied with. The foregoing shall not be construed to limit in any way the applicability of the Storm Water Control and Flood Plain regulations.

- A. "Restricted uses", as defined in § 3.Y and § 5.C.1 and 2 of the Storm Water Control and Flood Plain regulations in Appendix II, shall comply with the provisions of § 5.C.3 through 6 of said regulations.
- B. No "prohibited uses", as defined in § 5.E of the Storm Water Control and Flood Plain regulations in Appendix II, shall be permitted.

§ 18.21. AGE-RESTRICTED MULTI-FAMILY HOUSING ON THE GROUND FLOOR IN THE CBD DISTRICT [Added 12-14-04 by Ord. No. 1843]

Notwithstanding that residential building units are permitted only on the second or third floor of a building in the CBD district, age-restricted multi-family housing shall be permitted on both the upper floors and the ground floor in the CBD district, but only if all of the following requirements are complied with. These provisions are intended to permit this use in an appropriate location as a transitional use between the retail core of the central business district and residential areas outside the district.

- A. **Location.** The subject property for any such development shall be located on the west side of Prospect Street in the CBD district, but shall not be located within one hundred (100) feet of the right-of-way of Broad Street.
- B. **Minimum lot area.** There shall be a minimum lot area of twenty thousand (20,000) square feet.
- C. **Minimum lot frontage.** There shall be a minimum lot frontage of one hundred and twenty-five (125) feet.
- D. **Minimum side yard.** The minimum side yard shall be as required in the CBD district, except that the minimum side yard adjacent to any residential zone district boundary shall be twenty (20) feet.
- E. **Minimum rear yard.** The minimum rear yard depth shall be twenty (20) feet.
- F. **Maximum building height.** No principal building shall exceed the maximum of four (4) floors, exclusive of any basement floor or covered parking area located beneath the building and elsewhere below normal grade, or forty (40) feet, whichever is less, provided that a height of up to forty-three (43) feet shall be permitted if the facade of that portion of the building over forty (40) feet in height is set back from the facade of that portion of the building less than forty (40) feet in height a horizontal distance not less than one foot for each foot of building height over forty (40) feet.
- G. **Maximum improvement coverage.** No more than ninety percent (90%) of the lot area shall be covered by improvements.
- H. **Maximum density.** The density shall not exceed fifty (50) dwelling units per acre of the lot provided, however, that no development on any lot shall exceed a total of thirty-five (35) dwelling units, regardless of the lot area.
- I. **Minimum buffer depth.** Within the side and rear yards, except for any side yard where the building is permitted to abut the side lot line, there shall be provided a planted buffer at least ten

(10) feet in depth. Said buffer shall be planted with shrubs at least six (6) feet high at the time of planting, but may also be required to include shade trees or other trees of greater height as determined by the Planning Board or Board of Adjustment, as applicable, at the time of any required site plan review.

- J. **Screening of parking.** If parking spaces are located beneath the building, such parking shall be enclosed by walls designed to screen such parking from the view of the street and any abutting property, except for necessary wall openings for vehicular and pedestrian access.
- K. **Vehicular access.** Access to the subject property shall only be permitted from Prospect Street. As part of any required site plan approval, the Planning Board or Board of Adjustment may impose reasonable traffic controls, including but not limited to turning restrictions at the access driveway, designed to minimize the amount of traffic from the development using residential streets in the area.
- L. **Occupancy restriction.** All dwelling units within the development shall be restricted to occupancy by at least one person fifty-five (55) years of age or older. In addition, no children under the age of eighteen (18) years shall be permitted to reside in such dwelling units on a permanent basis. Appropriate restrictive covenants shall be imposed upon the development to ensure compliance with these age restrictions and with the "housing for older persons" exemptions of the Federal Fair Housing Act, 42 USC 3601, et seq.
- M. **Affordable housing component.** The development shall include at least one dwelling unit meeting the definition of "affordable housing" in § 2.04I for every eight (8) total dwelling units, or fraction thereof, provided in the project (i.e., one affordable unit for every nine market-rate units). In the alternative, the developer shall be required to pay a fee in lieu of providing such units within the development. If the development includes affordable housing units within the development, such units shall be required to comply with all applicable requirements for inclusionary developments as set forth in the substantive rules of the New Jersey Council on Affordable Housing in effect at the time of issuance of building permits for the development. If the development pays a fee in lieu of including such units within the development, the amount of the fee shall be four thousand three hundred seventy-five dollars (\$4,375.00) for each dwelling unit in the development, to be paid prior to the issuance of building permits and which shall be placed by the Town into an affordable housing fund, which fund shall be used by the Town for affordable housing activities.